

Claimant worked as a truck driver for respondent, driving a tanker, which required that she occasionally crawl underneath the truck to open valves. On November 14, 2000, while backing out from underneath the trailer, claimant stood up too soon, striking her head on the hose tube on the side of the trailer. Claimant testified she had headaches, which began that afternoon, and a stiff neck. Over the next several weeks, claimant's condition continued to worsen, with increased pain in her neck and radiculopathy down her right arm. Respondent acknowledges that claimant commented to her dispatcher, Dino, within two or three weeks of the incident that she had smacked her head and was having headaches. Claimant, however, also testified at the preliminary hearing that she discussed the incident with Dino on the date of accident. When questioned specifically by the Administrative Law

Judge, claimant stated "I said I smacked myself in the head and about knocked myself out." Claimant also stated that she told the dispatcher that she stood up too soon under the trailer and joked that the trailer did not give very well.

Claimant's testimony is uncontradicted and the Board finds it to be trustworthy and adopts same. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

Respondent contends claimant's testimony is not to be believed. It is alleged claimant testified in an earlier discovery deposition that she told no one about the accident on the date of accident. Claimant, however, stated that she did not testify that she did not talk to anyone. She simply stated she did not report it as an accident. She discussed the incident with the dispatcher as a comment, rather than a specific report. While this testimony is somewhat contradictory to claimant's preliminary hearing testimony, the Administrative Law Judge did have the opportunity to view claimant's testimony in person. In doing so, he accepted her testimony as credible. The Board also finds for preliminary hearing purposes that claimant's testimony is credible and, in adopting same, confirms that claimant provided timely notice of accident pursuant to K.S.A. 44-520.

As is always the case, this finding is preliminary and not binding in a full hearing on the claim, but is subject to a full presentation of the facts.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated February 20, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2002.

BOARD MEMBER

c: Richard H. Seaton, Attorney for Claimant
Douglas C. Hobbs, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director